

**LAW OFFICE OF KYLE C. OLIVE**  
**ATTORNEY AT LAW**

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August 18, 2008

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**VIA FACSIMILE ((360)753-1112) AND U.S. MAIL**

Mr. Bill Brumsickle, Chair  
Public Disclosure Commission  
711 Capitol Way, Room 206  
P.O. Box 40908  
Olympia, WA 98504-0908

**Re: Contribution Limitations Applicable to Rossi 2008**

Dear Commissioner Brumsickle:

The Washington State Republican Party ("WSRP") has recently sent out several large mailings containing direct advocacy on behalf of its gubernatorial candidate, Dino Rossi. The advertisements not only directly attack Governor Christine Gregoire, but explicitly ask voters to "vote for Dino Rossi." It appears from WSRP filings with this agency that these mailings were paid for with "exempt funds," in plain violation of RCW 42.17.640. With the primary elections happening tomorrow and the general election campaign about to begin in earnest, I write to ask the Commission to open an immediate investigation and to take prompt and effective remedial action to enforce our State's campaign finance regulatory scheme. An immediate investigation is essential to ensure that our election is not tainted with the deliberately improper use of campaign funds.

**Background and Relevant Statutory Provisions**

As the Commission is aware, the people of Washington enacted Initiative 134 in 1992. With this initiative, codified in chapter 42.17 RCW, the people expressed the desire to minimize the disproportionate influence of wealthy individuals and corporations. The initiative's explicit purpose was to ensure that all individuals and interest groups have an equal opportunity "to influence the elective and governmental processes," and to restore "public trust in governmental institutions and the electoral process." RCW 42.17.610-620. Accordingly, the people imposed limitations on contributions and expenditures. RCW 42.17.640.

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The statute, however, "exempts" funds raised for specifically identified purposes. RCW 42.17.640(15). Specifically, the statute provides that:

(15) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates; or

(b) An expenditure by a political committee for its own internal organization or fund raising without direct association with individual candidates.

RCW 42.17.640(15) (emphasis added).

Exempt contributions, of course, must be maintained in separate bank accounts, into which only exempt contributions may be deposited and from which only exempt expenditures may be made. WAC 390-17-060(c)(2). As the regulations make clear, "only exempt activities are eligible for payment with exempt contributions." WAC 390-17-060(c)(3).

Of course the statute itself makes it clear that the "exempt activities" defined in the statute may be paid for with exempt funds only if the activities are done "without promotion of or political advertising for individual candidates," RCW 42.17.640(15)(a), or "direct association with individual candidates." RCW 42.17.640(15)(b).

The Commission's regulations amplify this restriction.

(4)(a) Except as permitted by WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17.640 that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.

(b) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.

(5) Activities referenced in RCW 42.17.640 that do not promote, or constitute political advertising for, one or more clearly identified candidates qualify as

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exempt activities. For example, get-out-the-vote telephone bank activity that only encourages persons called to "vote republican" or "vote democratic" in the upcoming election may be paid for with exempt contributions regardless of the number of candidates who are benefited by this message.

(6)(a) "Internal organization expenditures" referenced in RCW 42.17.640 are expenditures for organization purposes, including legal and accounting services, rental and purchase of equipment and office space, utilities and telephones, postage and printing of newsletters for the organization's members or contributors or staff when engaged in organizational activities such as those previously listed, all without direct association with individual candidates.

(b) "Fund-raising expenditures" referenced in RCW 42.17.640 are expenditures for fund-raising purposes, including facilities for fund-raisers, consumables furnished at the event and the cost of holding social events and party conventions, all without direct association with individual candidates.

(c) If expenditures made pursuant to subsections (a) and (b) above are made in direct association with individual candidates, they shall not be paid with exempt contributions.

(7) For purposes of RCW 42.17.640 and this section, activities that oppose one or more clearly identified candidates are presumed to promote the opponent(s) of the candidate(s) opposed.

WAC 390-17-060 (emphasis added).

These are not obscure or difficult to interpret regulations. They are plain, clear and well known to political candidates and committees, and most certainly to the two major political parties in this state.

### **WSRP Mailings**

The WSRP has nonetheless sent several recent large mailings, paid for with exempt funds, that explicitly support their gubernatorial candidate or oppose the Governor in direct violation of the statute and its implementing regulations.

#### **A. "Taxes" Mailing**

First, the WSRP mailed a four page flier attacking Governor Gregoire for allegedly "raising taxes" (a set of decidedly misleading allegations to be sure), and explicitly calling on recipients to "vote for Dino Rossi." A true and correct copy of

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this mailing is attached as Exhibit A to this letter. The flier contains not only a half-page photograph of Mr. Rossi but a long quote from Mr. Rossi as well. Mr. Rossi is thus not only "clearly identified," WAC 390-17-060(7), but the flier constitutes "political advertising" for and "promotion" of Mr. Rossi, RCW 42.17.640(15)(a), *as well as* material in "direct association" with Mr. Rossi's campaign. RCW 42.17.640(15)(b).

#### **B. "Felons" Mailing**

In addition, the WSRP mailed a four page flier attacking Governor Gregoire for supposedly lax treatment of felons (another misleading set of allegations), and, again, explicitly calling on recipients to "vote for Dino Rossi." A true and correct copy of this mailing is attached as Exhibit B to this letter. The flier contains a different half-page photograph of Mr. Rossi and a quote from Mr. Rossi. Again, Mr. Rossi is thus not only "clearly identified," WAC 390-17-060(7), but the flier constitutes "political advertising" for and "promotion" of Mr. Rossi, RCW 42.17.640(15)(a), *as well as* material in "direct association" with Mr. Rossi's campaign. RCW 42.17.640(15)(b).

#### **C. "Raining" Mailing**

Finally, the WSRP mailed a four page flier attacking Governor Gregoire for allegedly engaging in "reckless" spending and, again, explicitly asking recipients to "vote for Dino Rossi." A true and correct copy of this mailing is attached as Exhibit C to this letter. The flier contains another photograph of Mr. Rossi and a different quote attributed to him. Again, Mr. Rossi is "clearly identified" by inclusion of his name and likeness. WAC 390-17-060(7). The flier constitutes "political advertising" and "promotion" of Mr. Rossi as well as material in "direct association" with Mr. Rossi's campaign. RCW 42.17.640(15)(a)-(b).

#### **WSRP PDC Filings**

On August 12 2008, the WSRP filed its regular PDC C-3 and C-4 reports. In those filings, the WSRP reported to the Commission that it paid for *both* fliers from its exempt accounts. True and correct copies of these reports are attached as Exhibit D to this letter.

None of these fliers are appropriately classified as "exempt" expenditures. The use of exempt funds to fund these fliers is a plain, clear, and (apparently) deliberate flaunting of the long standing and well settled restrictions imposed on exempt contributions.<sup>1</sup>

### Conclusion

Public confidence in our electoral system requires an even playing field, rules applicable to all parties and even handed and consistent enforcement of our campaign finance restrictions. The use of exempt funds to pay for blatant and widespread political advertising promoting statewide candidates is flatly impermissible, and obviously improper. I urge the Commission to immediately address this violation and to take prompt steps to enforce our campaign finance regulatory scheme and to prevent further improper expenditures in this election by the WSRP.

I would be pleased to provide the Commission with additional information or to respond to any questions or concerns that the commission might have. Thank you for your prompt attention.

Very truly yours,



Kyle Olive

Enclosures  
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<sup>1</sup> The fliers funded by the WSRP using "exempt" funds are described in the WSRP's most recent C4 filing as "member communications." Such a classification alone cannot be used to defeat the prohibition on using exempt funds where there is a "direct association" with an individual candidate such as Mr. Rossi. Even if the fliers did not directly promote Mr. Rossi's candidacy, it is highly suspect whether the fliers were sent to persons with "an active relationship" between the WSRP and the "members" who received the advertisements for purposes "other than influencing the outcome of" the 2008 gubernatorial election. WAC 390-05-515(2).

Commissioner Bill Brumsickle

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cc: Ken Schellberg, Vice-Chair  
Dave Seabrook, Secretary  
Jane Noland, Member  
Jim Clements, Member  
Vickie Rippie, Executive Director, Public Disclosure Commission  
Philip Stutzman, Director of Compliance, Public Disclosure Commission